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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,154	02/11/2005	Johann Natterer	2852/5	1572

7590 11/20/2006

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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/524,154

Applicant(s)

NATTERER, JOHANN

Examiner

Paul Durand

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Stockley (US 6,408,598).

In claim 1, Stockley discloses the invention as claimed including an upper film 24, located a distance above a product 16, which is clamped along an edge which surrounds tray 12, and is thereafter stretched in a direction away from the product, where the tray is raised to the film by means 54 and the tray and film are heat sealed together (see Figs. 1-6 and C10,L27 – C11,L15).

In claims 2 and 3, Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (see C10,L27 – C11,L15).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockley in view of Sanfilippo et al (US 6,202,388).

In claims 4, Stockley discloses the invention as claimed including sealing station, comprised of sealing heads 49, an internal space between the upper and lower portions, which are movable relative to each other, tray 12 inserted into the space in the open position, an upper film 24, supplied above the interior space, drive mechanism 54, for moving the upper and lower portions relative to one another for sealing. What Stockley does not explicitly disclose is the specific film feeding device and the use of a controller to control the operation.

However, Sanfilippo teaches that it is old and well known in the art of packaging to provide an upper film feed means 14 for feeding film 15, into a packaging machine 10, controlled by programmable controller 16, which controls the feed of the film, sealing operation and gas flow for the purpose of synchronizing a packaging operation (see Fig. 1 and C6,L56-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Stockley with the feed and controller means as taught by Sanfilippo for the purpose of electrically synchronizing a packaging operation.

In claim 5, Stockley discloses the invention as claimed including evacuating and backfilling the spaces surrounding the product prior to sealing (see C10,L27 – C11,L15).

In claims 6 and 8, The modified invention of Stockley discloses the invention as claimed including a carrying device 52 for accommodating tray 12 in the interior of the

chamber, which is bi-directional from a lower open position, where the tray is spaced from the plane of the upper film and a second position where the tray is raised to a minimum position for the film when the station is closed (see Figs. 1-6 and C10,L27 – C11,L15).

In claim 7, Stockley discloses the invention as claimed including an upper forming area 42, with a recess facing the lower portion (see Fig. 2).

Response to Arguments

5. Applicant's arguments filed 9/14/2006 have been fully considered but they are not persuasive.

Applicant first argues that the amendment to claim overcomes the prior art of Stockley since Stockley does not disclose a specific packing order as now claimed. The examiner does not agree. Stockley clearly discloses the invention in the order specified. Stockley in figure 2 shows the film located above the tray and stretched in a direction away from the product prior to the product being evacuated and sealed. Figure 3 shows the product being evacuated, while figures 5 and 6 show the product being sealed with the stretching means being removed from the film.

Moreover, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See also MPEP § 2131. As Stockley anticipated every element of the claim, the rejection is deemed proper.

Applicant further argues, that the combination of Stockley and the teaching of Sanfilippo is since Sanfilippo does not disclose the clamping and subsequent stretching. The examiner does not agree. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this instance, Stockley is being relied for the clamping and stretching of the film, while Sanfilippo is being relied on to show applicant that it is old and well known to provide a controller to synchronize a packaging operation. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Therefore, for the reasons indicated above the rejection is deemed proper.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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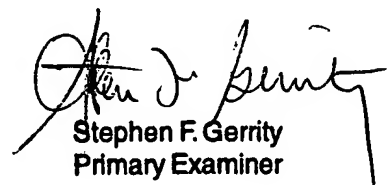
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paul Durand
November 15, 2006


Stephen F. Gerrity
Primary Examiner